

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO

3 CAROL WOJCIECHOWICZ, et al.,

4 Plaintiffs,

5 v.

6 UNITED STATES OF AMERICA,

7 Defendant.

CIVIL NO. 04-1846 (RLA)
CIVIL NO. 04-1856 (RLA)
CIVIL NO. 04-2342 (RLA)

**THIS DOCUMENT RELATES TO:
CIV. NO. 04-1856 (RLA)**

9 **ORDER IN THE MATTER OF FTCA**
10 **ADMINISTRATIVE CLAIM**

11 Defendant, the United States of America, has moved the court to
12 dismiss certain claims asserted by some of the plaintiffs in these
13 proceedings arguing that no administrative claim was filed on their
14 behalf as mandated by the provisions of the Federal Tort Claims Act
15 ("FTCA"), 28 U.S.C. § 2675(a).

16 **BACKGROUND**

17 These consolidated cases¹ arise out of an aircraft crash that
18 occurred on January 5, 2002 in the vicinity of the peak of El Yunque,
19 Puerto Rico. The aircraft was owned by Alexander Leasing, LLC and
20 flown by decedent Alexander Wojciechowicz. In addition to the pilot,
21 four passengers were also killed in the accident. These were: (1)
22 Katherine Wojciechowicz Angrick (pilot's daughter), (2) Mark R.

23
24
25 ¹ See, Carol Wojciechowicz v. United States of America, Civ. No. 04-
26 1846 (RLA) (contribution claims) and U.S. Specialty Ins. Co. v. United
States of America, Civ. No. 04-2342 (RLA) (aircraft insurer indemnity
claim).

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3 Angrick (Katherine's husband), (3) Heath (Katherine's son), and Lois
4 Angrick (Mark's mother).

On or about January 5, 2004, Carol Wojciechowicz, the pilot's widow, individually and as Executrix of the Estate of Alexander Wojciechowicz, filed a Standard Form 95 ("SF-95") Claim for Damage, Injury, or Death with the FAA. The claim sought both economic and non-economic damages, including loss to the estate, funeral and burial expenses and loss of care, comfort and companionship for the "[w]rongful death of Alexander Wojciechowicz."

12 On or about January 5, 2004, Michael T. Wojciechowicz,
13 individually and as Executor of the Estate of Katherine Wojciechowicz
14 Angrick, filed a SF-95, claim for Damage, Injury, or Death with the
15 FAA. The claim described the damages being sought as "[w]rongful
16 death damages for the death of Katherine Wojciechowicz Angrick"
17 including "all appropriate wrongful death damages including, but not
18 limited to funeral and burial expenses, loss to the estate, loss of
19 care, guidance and companionship."

Subsequently, Carol Wojciechowicz, as well as her two surviving children, Michael and Susan, instituted these proceedings seeking damages for the deaths of Alexander and Katherine Wojciechowicz.

Subject Matter Jurisdiction

24 The court's authority to entertain a particular controversy is
25 commonly referred to as subject matter jurisdiction. "In the absence
26 of jurisdiction, a court is powerless to act.") Am. Fiber &

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4 Cir. 2004).

5 Federal courts are courts of limited jurisdiction and hence,
6 have the duty to examine their own authority to preside over the
7 cases assigned. "It is black-letter law that a federal court has an
8 obligation to inquire *sua sponte* into its own subject matter
9 jurisdiction." McCulloch v. Velez, 364 F.3d 1, 5 (1st Cir. 2004). See
10 also, Bonas v. Town of North Smithfield, 265 F.3d 69, 73 (1st Cir.
11 2001) ("Federal courts, being courts of limited jurisdiction, have an
12 affirmative obligation to examine jurisdictional concerns on their
13 own initiative.")

14 Further, subject matter jurisdiction is not waivable or
15 forfeited. Rather, it involves a court's power to hear a case, it may
16 be raised at any time. Kontrick v. Ryan, 540 U.S. 443, 124 S.Ct. 906,
17 157 L.Ed.2d 867 (2004); United States v. Cotton, 535 U.S. 625, 122
18 S.Ct. 1781, 152 L.Ed.2d 860 (2002). "The objection that a federal
19 court lacks subject-matter jurisdiction... may be raised by a party,
20 or by a court on its own initiative, at any stage in the litigation,
21 even after trial and the entry of judgment." Arbaugh v. Y&H Corp.,
22 ___ U.S. ___, 126 S.Ct. 1235, 1240, 163 L.Ed.2d 1097 (2006).

23 The proper vehicle for challenging the court's subject matter
24 jurisdiction is Rule 12(b) (1) whereas challenges to the sufficiency
25 of the complaint are examined under the strictures of Rule 12(b) (6).
26 In disposing of motions to dismiss for lack of subject matter

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4 jurisdiction the court is not constrained to the allegations in the
5 pleadings as with Rule 12(b) (6) petitions. Rather, the court may
6 review extra-pleading material without transforming the petition into
7 a summary judgment vehicle. Gonzalez v. United States, 284 F.3d 281,
8 288 (1st Cir. 2002); Aversa v. United States, 99 F.3d 1200, 1210 (1st
Cir. 1996).

9 **FTCA - Exhaustion of Administrative Remedies**

10 The United States, as a sovereign, is immune from suit unless it
11 waives its immunity by consenting to be sued. See, United States v.
12 Mitchell, 463 U.S. 206, 212, 103 S.Ct. 2961, 77 L.Ed.2d 580 (1983)
13 ("It is axiomatic that the United States may not be sued without its
14 consent and that the existence of consent is a prerequisite for
15 jurisdiction."); Bolduc v. United States, 402 F.3d 50, 55 (1st Cir.
16 2005) (United States immune except to extent it waives its immunity);
17 Dynamic Image Tech., Inc. v. United States, 221 F.3d 24, 39 (1st Cir.
18 2000) ("As a sovereign nation, the United States is immune from
19 liability except to the extent that it consents to suit."); Day v.
20 Massachusetts Air Nat'l Guard, 167 F.3d 678, 681 (1st Cir. 1999)
21 ("[a]s sovereign, the United States may not be sued for damages
22 without its consent.") Limitations to the sovereign immunity of the
23 United States such as the FTCA must be strictly construed and are not
24 subject to waiver. Patterson v. United States, 451 F.3d 268, 270 (1st
25 Cir. 2006); Dynamic Image Tech., 221 F.3d at 39.

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4 The FTCA waives the sovereign immunity of the United States "in
5 the same manner and to the same extent as a private individual under
6 like circumstances." See, Sosa v. Alvarez-Machain, 542 U.S. 692, 700,
7 124 S.Ct. 2739, 159 L.Ed.2d 718 (2005) (FTCA designed to remove
8 immunity from torts similar to private individuals); Santoni v.
9 Potter, 369 F.3d 594, 602 (1st Cir. 2004) ("[FTCA] provides a limited
10 congressional waiver of the sovereign immunity of the Untied States
11 for torts committed by federal employees acting within the scope of
12 their employment [similar to private parties in similar
13 circumstances]"); Roman v. Townsend, 224 F.3d 24, 27 (1st Cir. 2000)
14 ("FTCA waives the sovereign immunity of the United States with
respect to tort claims").

15 The waiver of sovereign immunity under the FTCA is also limited
16 by a requirement that those seeking relief present their claim to the
17 pertinent federal dependency prior to seeking judicial relief. *Id.*
18 Specifically, 28 U.S.C. § 2675(a) provides that "[a]n action shall
19 not be instituted upon a claim against the United States for money
20 damages for... injury or death caused by the negligent or wrongful
21 act or omission of any employee of the Government while acting within
22 the scope of this office or employment, unless the claimant shall
23 have first presented the claim to the appropriate Federal agency".
24 See also, 28 U.S.C. § 2401(b) which, in pertinent part reads: "[a]
25 tort claim against the United States shall be forever barred unless
26 it is presented in writing to the appropriate Federal agency within

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3 two years after such claim accrues". "Congress has taken pains to
4 establish an administrative framework that claimants must follow
5 before they can sue under the FTCA. One important component of this
6 framework is the notice-of-claim provision." Dynamic Image Tech., 221
7 F.3d at 39.

8 The notice requirement seeks to allow the government to inquire
9 into the conduct at issue while at the same time assess its economic
10 exposure. "The purpose of requiring exhaustion of administrative
11 remedies is to avoid litigation where a claim can be resolved
12 administratively. Exhaustion of administrative remedies is aimed at
13 reducing court congestion and avoiding unnecessary litigation, while
14 expediting the fair settlement of tort claims asserted against the
15 government." 3 Lester S. Jayson and Robert C. Longstreh, Handling
16 Federal Tort Claims § 17.01 p. 17-12 (LexisNexis Matthew Bender rel.
17 42-3/99). See also, S. Rep. No. 1327, 89th Cong., 2d Sess. 6 (1966).

18 The Court of Appeals for the First Circuit "approaches the
19 notice requirement leniently." Santiago Ramirez v. Sec'y of Dept' of
20 Def., 984 F.2d 16, 19 (1st Cir. 1993). "[T]he express jurisdictional
21 prerequisites of § 2675(a) are fully satisfied as long as the
22 claimant states a claim of government wrongdoing and defines its
23 damages in a sum certain." Patterson, 451 F.3d at 272. "This court
24 has refused to interpret the notice-of-claim requirements woodenly.
25 We have attempted instead to achieve a balance, recognizing that
26 persons wishing to hold the federal sovereign liable in tort must

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4 satisfy the strictures of the law, but also recognizing that Congress
5 did not intend to shield the federal fisc behind an impenetrable
6 thicket of lawyerly technicalities." Dynamic Image Tech., 221 F.3d at
7 40.

8 "The test is an eminently pragmatic one: as long as the language
9 of an administrative claim serves due notice that the agency should
10 investigate the possibility of particular (potentially tortious)
11 conduct and includes a specification of the damages sought, it
12 fulfills the notice-of-claim requirement." *Id.*

13 In sum, the administrative claim mechanism requires enough
14 information regarding the identity of the persons seeking relief, the
15 underlying grounds therefore and the sums demanded, to allow for a
16 meaningful investigation of the facts and an assessment of potential
17 liability. "Because the purpose of § 2675 is to inform the relevant
18 agency of the circumstances of the accident so that it may
19 investigate the claim and fairly respond by settlement or by defense,
20 the notice requirement is met if the claimant (1) gives the agency
21 written notice of his or her claim sufficient to enable the agency to
22 investigate and (2) places a value on his or her claim." Marricone v.
23 United States, 697 F.Supp. 874, 876 (E.D.Pa. 1988) (citation and
24 internal quotation marks omitted).

25 "[T]he relevant criteria for a correct administrative claim [is]
26 whether the agency was fully aware of who were the individuals
actually pursuing the claim and the nature of the total claim."

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Adames-Mendez v. United States, 652 F.Supp. 356, 358 (D.P.R. 1987) (italics in original). See, Frantz v. United States, 791 F.Supp. 445, 451 (D.De. 1992) (need to provide notice of who is claiming and for what injury).

Adequate notice also requires that the allegations at the agency level and the subsequent complaint "jibe". Dynamic Image Tech., 221 F.3d at 41. See, Tentadue v. United States, 397 F.3d 840, 853 (10th Cir. 2005) (Notice provision requires "notice of the facts and circumstances underlying a claim rather than the exact grounds upon which plaintiff seeks to hold the government liable."); Dynamic Image Tech., 221 F.3d at 40 "claim did not contain so much as a hint about the alleged arrest or the incident that spawned it. To that extent, then, the amended complaint exceeded the scope of the administrative claim."

Standing

18 The Government argues that, in accordance with the Puerto Rico
19 legal provisions, the adult plaintiffs in this case who were not
20 specifically identified in the administrative claims nor filed
21 independent claims may not pursue judicial relief.

22 Our role at this juncture is to determine whether the SF-95 Form
23 filed by Carol Wojciechowicz individually and as Executrix of the
24 Estate of Alexander Wojciechowicz satisfies the notice requirement of
25 the FTCA for the individual claims of his adult children, Michael and
26 Susan. Similarly, whether the SF-95 Form submitted by Michael

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4 Wojciechowicz individually, and as Executor of the Estate of
5 Katherine Wojciechowicz Angrick, provided sufficient notice to the
6 Government on behalf of the decedent's mother and surviving sister.

7 The pertinent FTCA regulations provide that claims "based on
8 death may be presented by the executor or administrator of the
9 decedent's estate, or by any other person legally entitled to assert
10 such a claim in accordance with applicable State Law." 28 C.F.R.
§ 14.3(c).

11 "Liability under the Federal Tort Claims Act is determined in
12 accordance with the law of the place where the act or omission
13 occurred." Scanlon v. Dep't of the Army, 277 F.3d 598, 600 (1st Cir.
14 2002). See, i.e., Santoni, 369 F.3d at 603 ("Because the alleged
15 tortious conduct took place in Maine, we look to Maine tort law in
16 determining the defendant's liability under the FTCA.") Thus, the
17 substantive law of the place of the accident is used for ascertaining
18 the authority to bring suit on behalf of others. Wozniak v. United
19 States, 701 F.Supp. 259 (D.Mass. 1988).

20 Even though the United States argues that "the standing of the
21 representatives of the estates is not at issue here [but rather]...
22 whether the court can exercise subject matter jurisdiction over
23 wrongful death claims brought in this case by family members, when
24 these family members were not identified in the administrative claims
25 presented to the FAA, and the family members did not file individual
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3 claims"² we find that, in this case, these two issues are
4 inextricably intertwined. Notice cannot be examined in a vacuum. It
5 is necessarily connected to the law which gives rise to the cause of
6 action being asserted. The scope of the representation capacity of a
7 plaintiff as well as the nature of the damages which may be collected
8 thereby and on whose behalf will be determined by the state's
9 applicable law. Hence, the adequacy of the notice may vary depending
10 on which law is used to examine the scope of the representation,
11 i.e., standing.

12 Thus, a claimant filing a SF-95 on behalf of others as
13 authorized by local law may be, by that fact, providing notice of the
14 claims of those individuals he is representing.

15 In this regard, applying the law where the wrongful death
16 occurred, courts have determined that in particular circumstances the
17 claims asserted by an estate's executor and/or representative
18 constitute sufficient FTCA notice on behalf of others not identified
19 by name in the claim. In Hiatt v. United States, 910 F.2d 737, 741
20 (11th Cir. 1990), a case involving a claim for wrongful death
21 submitted by the estate's representative, the court found that,
22 pursuant to the Florida Wrongful Death Act, the claim was deemed to
23 provide adequate notice of a minor son's cause of action even though
24 he was not named in the administrative claim. The court reasoned that

26 ² Reply (docket No. 29) p. 2.

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3 "[i]n [the widow's] administrative claim it was clear that [the
4 widow] was acting as the personal representative of [the estate], and
5 thus, the government had notice that damages would be sought for all
6 beneficiaries of the estate."

7 Similarly, in Starr v. United States, 262 F.Supp.2d 605 (D.Md.
8 2003) the court ruled that even though only the name of decedent's
9 mother appeared in the SF-95, the fact that the claim specified it
10 was for "wrongful death" - only available to the parents of the
11 deceased under Maryland law - and that the cover letter accompanying
12 the SF-95 named both parents individually and the mother as Personal
13 Representative of the Estate proved sufficient notice to the wrongful
14 and survivorship claims for both parents. See also, Transco Leasing
15 Corp. v. United States, 896 F.2d 1435 (5th Cir. 1990) (administrative
16 claim filed by executor in accordance with Texas Wrongful Death Act
17 complied with notice requirement as to decedent's widow and daughter
18 even though they were not specifically identified in claim); Sullivan
19 v. United States, 777 F.Supp. 695, 698-9 (N.D.Ind. 1991) (in
20 accordance with Indiana law, administrative claim for wrongful death
21 filed by widow as Personal Representative of the estate satisfied the
22 § 2675(a) requirement of two minor children even though they were not
23 named in the claim); Marricone, (applying Kentucky law, court held
24 that failure of personal representative of the estate to identify
25 decedent's two illegitimate minor children did not bar FTCA relief).
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4 In Puerto Rico, an estate is not a juridical person and as such
5 does not have the legal capacity to prosecute a wrongful death claim.
6 Except for minors - who may be represented by a parent - each
7 particular member of the estate must individually provide notice of
8 his/her claim. "[U]nder Puerto Rico inheritance law a succession or
9 a decedent's estate is not an entity distinct and separate from the
10 persons composing it. Put another way, the succession does not have
11 existence by itself as a juridical person or entity on behalf of
12 which a lawsuit can be brought." Arias-Rosado v. Gonzalez Tirado, 111
13 F.Supp.2d 96, 98-9 (D.P.R. 2000). "Under Puerto Rican law a
14 succession by itself does not have capacity to sue or to be sued and
15 has no existence as a juridical person. If a succession intends to
16 sue or is to be sued, the names of the persons composing the name
17 must be expressed individually and in detail. In other words,
18 although a succession may be a party plaintiff, the names of the
19 persons who compose it must be alleged." Santos v. United States, 525
F.Supp. 982, 984 (D.P.R. 1981) (internal citations omitted).

20 Cases arising from this jurisdiction have found that the failure
21 to file individual FTCA claims is fatal unless notice is otherwise
22 provided to the government. For instance, in Del Valle Rivera v.
23 United States, 626 F.Supp. 347, 349 (D.P.R. 1986) even though the
24 claim was filed on behalf of the estate of the deceased, the agency
25 was subsequently informed of the names of the individual heirs and
26 thereby complied with the jurisdictional notice requirement. In

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3 Santos, even though decedent appeared as the only claimant the court
4 ruled that sufficient notice had been provided regarding the claims
5 of both the widow and the minor children although not the adult
6 children. The court noted that the agency was aware that the claim
7 was being pursued by the widow who, as mother of the minor children,
8 could also represent their interests. However, the adult children
9 were required to file their individual claims and could not benefit
10 from her efforts.

11 In sum, based on the foregoing, it is axiomatic that in Puerto
12 Rico the relief awarded by the court in wrongful death cases does not
13 enure to the benefit of the estate. Rather, each person affected
14 thereby must independently seek compensation for his/her own damages
15 which includes providing individual notice under § 2675(a).

16 In the case before us, the two administrative claims were
17 submitted by the executors of the respective estates both
18 individually and as representatives of each of the estates. Pursuant
19 to Puerto Rico law, the fact that Carol and Michael Wojciechowicz
20 were acting on behalf of the estates does not necessary translate
21 into notice of the individual claims of the members of the two
22 estates.

23 We find, however, the evidence presented to the FAA by
24 plaintiffs herein sufficient to alert the government as to the
25 identity of decedent's survivors, i.e., members of each of the
26 estates. The claims for the two estates were filed the same day

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3 through the same counsel, all bore the same last name and the FAA
4 denied all the claims via a single letter.³ Further, the government
5 had available a mechanism to further explore the identity of the
6 members of the estate in case of doubt.⁴ It must also be noted that
7 the monetary demand in each of the complaints filed does not surpass
8 the sums sought in the notices submitted at the agency level.

9 The essential issue here is adequate notification to the
10 sovereign, the defendant herein. As previously noted, this Circuit
11 has made it plain that it "approaches the notice requirement
12 leniently." Santiago Ramirez, 984 F.2d at 19. It has also held that
13 "persons wishing to hold the federal sovereign liable in tort must
14 satisfy the strictures of the law, but also recognizing that Congress
15 did not intend to shield the federal fisc behind an impenetrable
16 thicket of lawyerly technicalities." Dynamic Image Tech., 221 F.3d at
17 40. I would add with respect to the matter of the notification
18 requirement that it is unbecoming for the sovereign to "play dumb".
19

20 ³ In the case of the claim of Carol Wojciechowicz for the
21 wrongful death of her daughter, the funeral bill was issued to her
22 name, the letter authorizing her counsel to file suit also made
23 reference to potential claims for the deaths of Katherine and her
24 son. Similarly, with respect to Michael's claim for the wrongful death of
his father, plaintiffs submitted an amendment to the Operating Agreement of
Alexander Leasing, L.L.C. appointing the widow as general manager of the
company was executed by Michael Wojciechowicz, a/k/a Tim Wojciechowicz
as further evidence of their position.

25 ⁴ See, 28 C.F.R. § 14.4(a)(3) which provides that "[i]n support
26 of a claim based on death, the claimant may be required to submit the
[f]ull names... of the decedent's survivors...."

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4 Based on the foregoing, the Motion of Defendant United States of
5 America to Dismiss Certain Claims for Lack of Subject Matter
Jurisdiction (docket No. 22) is **DENIED**.⁵

6 IT IS SO ORDERED.

7 In San Juan, Puerto Rico, this 20th day of February, 2007.

8 _____
9 S/Raymond L. Acosta
RAYMOND L. ACOSTA
10 United States District Judge

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26 ⁵ See, Opposition (docket No. 27) and Reply (docket No. 29).